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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:	
Review of the Commissions' Regulations Governing Television Broadcasting	MM Docket No. 91-221
Television Satellite Stations Review of Policy and Rules	MM Docket No. 87-8
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	MM Docket No. 94-150
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	MM Docket No. 92-51
Reexamination of the Commission's Cross-Interest Policy	MM Docket No. 97-154

To: The Commission

CONSOLIDATED REPLY COMMENTS OF TRIBUNE BROADCASTING COMPANY

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CONSOLIDATED REPLY COMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune"), on behalf of its ten television stations and five radio stations, hereby files its consolidated reply to the comments submitted in response to: (i) the Commission's Second Further Notice of Proposed Rule Making ("TV Ownership Second Notice"), FCC 96-438, released November 7, 1996 in its ongoing Television Ownership proceeding in MM Docket No. 91-221; and (ii) the Further Notice of Proposed Rule Making, FCC 96-436, released November 7, 1996 in the ongoing Broadcast Attribution proceeding (hereinafter the "Attribution

FNPRM").[1] Although Tribune is a member of the Local Station Ownership Coalition ("LSOC"), the Association of Local Television Stations ("ALTV"), and the National Association of Broadcasters ("NAB") and fully supports the comments these groups filed in response to the TV Ownership Second Notice, Tribune has identified a number of issues that require separate emphasis or comment.

I. INTRODUCTION & SUMMARY

In its comments filed in response to the Commission's January 1995 Further Notice of Proposed Rule Making in the television ownership proceeding ("TV Ownership Further Notice"), which are incorporated herein by reference, Tribune urged the Commission to recognize the dramatic and irreversible changes that had occurred in the market for the delivery of video programming since the Commission adopted its duopoly rule. Based on these fundamental changes in the market, Tribune urged the Commission to permit local television duopolies where at least

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[1] Tribune Broadcasting's wholly-owned television stations include: WGN-TV, Channel 9, Chicago, IL; KTLA(TV), Channel 5, Los Angeles, CA; WPIX(TV), Channel 11, New York, NY; WGNX(TV), Channel 36, Atlanta, GA; WLVI-TV, Channel 56, Cambridge, MA; KWGN-TV, Channel 2, Denver, CO; KHTV-TV, Channel 39, Houston, TX; WGNO(TV), Channel 26, New Orleans, LA; WPHL-TV, Channel 17, Philadelphia, PA and KSWB-TV, Channel 69, San Diego, CA. Tribune Broadcasting also indirectly owns WGN(AM), Chicago, IL; WQCD(FM), New York, NY; KKHK(FM) and KOSI(FM), Denver, CO; and KEZW(AM), Aurora, CO. Tribune's parent, Tribune Company, is the publisher of the following daily newspapers: The Chicago Tribune, The Orlando Sentinel, The Sun-Sentinel (in the greater Miami, Florida area) and The Daily Press in Newport News, Virginia.

one of the stations broadcast from the UHF band -- a change that would permit over-the-air broadcasters to compete on a more even playing field with the cable industry for the most popular programming, advertising revenues and audience. Tribune demonstrated that without action recognizing these market changes, the very people the Commission is most concerned about protecting -- those who cannot afford to subscribe to cable television -- would be increasingly deprived of access to the best entertainment, news and public affairs programming available.

These reply comments initially will summarize the market trends discussed in Tribune's comments submitted in response to the TV Ownership Further Notice and demonstrate that these trends have continued unabated. The comments will then provide additional evidence demonstrating the continued competitive threat from the cable industry and the need for duopoly relief. Tribune will then respond to various issues specifically raised in the TV Ownership Second Notice and the Attribution FNPRM.

II. THE DUOPOLY RULE MUST BE CHANGED TO REFLECT MARKET REALITIES

Background: As demonstrated in Tribune's comments in response to the TV Ownership Further Notice, the dramatic growth and success of the cable television industry, with its wide variety of program offerings and largely unregulated ownership structure, has forever changed the way a majority of the American public receives its video programming. This has dramatically changed the competitive landscape for over-the-air broadcasters, especially for independent station operators like Tribune.[2] Unlike over-the-air broadcasters, basic cable networks are supported by a dual revenue stream of subscription fees and advertising revenues. They have been largely free to pursue operating efficiencies, both horizontally and vertically, that have improved their ability to compete for audience, advertising revenue and the most popular programming.[3] The Commission's most recent annual report on Competition in the Market for the Delivery of Video Programming confirmed this trend:

> Over the past decade, the number of television viewing hours of non-premium cable programming networks has grown. Comparing the 1984-85 and 1994-95 seasons, the combined, full-day audience of cable networks has increased from an 11% share to a 30% share of television viewing hours. Comparing the same two periods, the combined audience share of the network

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[2] Eight of Tribune's ten television stations, including WPIX, WGN and KTLA, are independent stations who are affiliated with the new Warner Brothers ("WB") television network. While Tribune fully supports the WB (and in fact has a minority ownership interest in the network), the network is not yet developed to the point that it can be considered a substitute for the four established networks.

[3] Tribune highlighted the dramatic increases in audience share enjoyed by basic cable networks in both cable homes and in all television households since 1983. Specifically, basic cable networks enjoyed a 253 percent increase in sign-on to sign-off ("S/O-S/O") audience share in cable homes and a 371 percent increase in S/O-S/O audience share in all television households. Tribune Comments at 7 (citing Cable TV Programming, Paul Kagan Associates, Inc., February 28, 1995, at 5). During this same time period, the combined S/O-S/O audience share of independent stations remained flat in cable homes and increased only slightly among all television households. Id. at 7.

> affiliated, independent, and public broadcast television stations has decreased from an 87% share to a 72% share of television viewing hours. This growth in the viewership of the cable networks has continued into the 1996/97 season. The total prime time share of the cable networks for the first week of the 1996/97 television season increased 11.1% over the first week of the 1995/1996 season to 30% of television viewing hours.

Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, ("Third Annual Report") FCC 96-496, CS Docket No. 96-133, released January 2, 1997, at 12 (footnotes omitted).

These operating efficiencies include the ability of cable programmers to launch multiple channels using the same sales, promotional and administrative infrastructure -- efficiencies that permit cable programmers to devote a larger percentage of their overall revenues to the production and acquisition of programming.[4] The efficiencies also include the benefits of regional clustering and interconnects whereby local cable MSOs sell advertising time on multiple cable channels

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[4] Turner Broadcasting's recent launch of two new cable networks, Turner Classic Movies and the Turner Cartoon Network, is a good example of these efficiencies. With three established basic cable channels (TBS, CNN and TNT), Turner was able to launch the new cable networks at a fraction of the cost it would take a new programmer to start similar channels. Turner's existing infrastructure -- both its administrative and sales staffs and its ability to cross-promote the new channels -- allowed it to start these new networks at a cost of about 38 percent of the estimated stand-alone start-up costs of similar networks (amounting to an estimated savings of $22 million). Cable TV Programming, Paul Kagan Associates, Inc., February 27, 1995, at 1. These savings permitted Turner to devote a larger percentage of their revenues to program acquisitions.

serving an entire metropolitan area with a single sales staff.[5] These MSOs sell to the same local advertisers that local over-the-air television stations sell to, except that the over-the-air stations are limited by the duopoly rule to selling time on only one channel. The Third Annual Report recognized that as of year-end 1995, fifty percent of all cable subscribers were served by clustered cable systems.[6]

The trend toward vertical integration in the cable industry, where a number of the largest cable MSOs have leveraged their cable service areas backwards into significant ownership interests in basic cable networks, has also contributed to these efficiencies.[7] Vertical integration enhances the ability of cable programmers to launch new networks by guaranteeing carriage on the MSO-owners' systems and also provides these programmers with additional access to the subscription revenues enjoyed by the MSOs. Access to these subscription revenues is no small

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[5] "Local Cable's Ace in the Hole" Digital Interconnection," Broadcasting & Cable, June 24, 1996, at 58; "Local Ad Sales Getting It Together," Adweek, May 8, 1995.

[6] As noted in the Third Annual Report: "Cable MSOs continue their trend towards creating large regional system clusters. The number of clusters of systems serving at least 100,000 subscribers increased from 97 at year-end 1994 to 137 by year-end 1995. The latter number of clusters accounted for 50% of all cable subscribers." Third Annual Report at 70.

[7] "Cable Clustering Makes For Active Market: virtually all top system operators make or consider deals during the past year," Broadcasting & Cable, March 6, 1995, at 53.

matter. According to Paul Kagan Associates, cable subscription fees in 1995 totaled approximately $15.7 billion.[8]

The largest cable MSOs have also parlayed their growing service areas to form regional sports channels that compete directly with local, independent over-the-air broadcasters for the rights to air local sporting events. The Third Annual Report noted that Fox Television formed a joint venture with TCI and Liberty Media to form the Fox Sports Net. Id. at 75. This new basic cable sports network consists of nine regional sports networks with a combined 25 million subscribers nationwide. Id. This new venture has been very aggressive in bidding for local sports rights -- in direct competition with independent, over-the-air broadcasters and is expected to compete for national sports distribution rights as well. See also Inquiry into Sports Migration, 9 FCC Rcd. 3440 (1994).

Many basic cable networks also directly compete with over-the-air broadcasters for the most popular movies and off-network series -- the lifeblood of independent, over-the-air

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[8] The Third Annual Report also confirmed that 64 of the 145 national cable programming services in operation today are vertically integrated. Third Annual Report at 73. Cable MSOs, either individually or collectively, own 50 percent or more of 47 national cable programming networks. Id. TCI, the largest MSO, holds ownership interests in no less than 34 national programming services, representing approximately 23 percent of all national cable programming networks. Id. at 74. Time Warner, the second largest MSO, holds interests in 22 national programming services, representing approximately 15.3 percent of national cable programming services. Id.

broadcasters who use this programming to counterprogram network offerings and to support their local news and public affairs programming. These basic cable networks have become increasingly successful in purchasing the most popular programming due, in significant part, to the combination of operating efficiencies and their dual revenue streams.[9] For example, Tribune noted that motion pictures are now typically sold to basic cable networks before being made available to over-the-air broadcasters.

Because access to the most popular programming is crucial to the long-term prospects of independent, over-the-air broadcasters, Tribune urged the Commission to even the playing field by permitting local duopolies involving UHF-UHF or VHF-UHF combinations. These combinations would improve the competitiveness of over-the-air broadcasters, especially independent stations, by permitting them to enjoy some of the efficiencies already enjoyed by the cable industry and the radio industry. These efficiencies would permit combined back room operations, freeing up more revenues for the acquisition of programming and permit the significant start-up costs associated with local news operations or local programming capacity to be spread over two stations. It would also give broadcasters

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[9] Tribune noted that five of the ten most successful cable networks were programmed much like independent television stations and that, given the ownership and operating efficiencies the owners of these basic cable networks were free to enjoy, the competitive threat to independent broadcasters from these basic cable networks would only increase.

flexibility to exploit different market segments with the second programming stream.

Tribune emphasized that this proposed change to the duopoly rule in no way sought special relief or protection from competition. Instead, the requested change was designed to permit over-the-air broadcasters to compete on a more equal basis with the vertically integrated cable industry that has been largely free of ownership regulation and public interest obligations.

Recent Developments: In the time since comments were submitted in response to the TV Ownership Further Notice, the trends Tribune described have continued unabated. As recognized by the AK Media Group in its comments submitted in response to the Second TV Notice:

> Local broadcast stations compete in an ever more competitive market. They not only compete against each other, they also compete against a now entrenched and mature cable industry and a host of other multichannel providers. Furthermore, they compete with one channel against the multiplicity of channels provided by their video competitors. They derive revenue from a single source -- advertising -- while their competitors enjoy multiple revenue sources. Their competitors remain largely unfettered and free to pursue the efficiencies of horizontal and vertical integration. Meanwhile, broadcast licensees remain barred by the duopoly rule from achieving the efficiencies of combined operations.

Comments of AK Media Group, Inc. at 14-15 (footnotes omitted). The LSOC also recognized these same trends: "[l]ocal television stations today compete voraciously for viewers, advertising, and programming with video media which barely existed in 1972. The evolution of the broadcast television marketplace to a multi-media marketplace hardly may be blinked. Competition exists where it never did before. Diversity has grown by leaps and bounds." Comments of LSOC at 22.

Basic cable networks continue to attract large audience shares. As noted in Tribune's earlier comments above, these networks have been increasingly successful in acquiring the most popular motion pictures and off-network program series in competition with over-the-air broadcasters. The migration of this popular programming from over-the-air television has continued since the TV Ownership Further Notice. For example, the over-the-air industry has seen the top-rated program on television, the NBC one-hour dramatic series ER, sold in syndication first to a basic cable network.[10] Tribune submits that this migration is not an isolated, random occurrence. Instead, it represents stark, powerful example of what the future holds for over-the-air broadcasters, especially independent broadcasters, if they remain constrained by a regulatory ownership regime designed for the 1970s. NBC quite properly observed in its comments in response to the Second TV Notice:

> the proliferation of alternative sources of video programming has resulted in a dramatic increase in

[10] "Turner pays $1.2 million for 'ER," most recent series of big ticket off-net hour sales to cable," Broadcasting & Cable, February 5, 1996, at 44.

> competition for program distribution and advertising markets, as well as greater diversity in programming and viewpoint. The effect of these changes on broadcast TV has been a steady decline in its relative competitive position. Consequently, the Commission can no longer take for granted that broadcast television will remain an economically robust medium for free over-the-air video programming.

Comments of National Broadcasting Company, Inc. at 10.[11]

The migration of the most popular programming to cable and NBC's comments indirectly touch on a recurring theme in the Commission's various television ownership rule makings. The Commission implicitly assumes that because over-the-air broadcasters have access to a bigger upfront audience then the cable industry, these broadcasters automatically have a significant competitive advantage that must be controlled through ownership restrictions. Tribune submits that this implicit assumption misses the mark.

To continue to generate the large audiences that they can then sell to advertisers, over-the-air broadcasters must be able to compete successfully with the cable industry for the approximately 70 percent of viewers who subscribe to cable. As the cable industry purchases more and more of the most popular programming, funded by its dual revenue stream and economic efficiencies, it will attract larger and larger shares of the

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[11] To ensure the continued long-term health of free, over-the-air broadcast television, NBC urged the Commission to "modernize its rules to keep pace with technological change and the deregulation of broadcasting's competitors." Id.

audience and place over-the-air broadcasters, especially independent broadcasters, at an increasing competitive disadvantage. Broadcasters will be unable to afford the high-quality programming that has helped keep the broadcast medium competitive. This will particularly harm the 30 percent of viewers in non-cable homes.

Moveover, without the revenue produced by the best programs, the industry's ability to provide local news and public affairs programming -- the Commission's core concern with respect to diversity will deteriorate as well.[12] This will harm all viewers, including those in cable homes, because national cable programmers generally do not provide the local non-entertainment programming broadcasters supply as Commission licensees.

Accordingly, Tribune submits that the Commission should revise its duopoly rule to ensure that the American public continues to receive the highest quality, free, over-the-air television service well into the twenty-first century. Specifically, the Commission should permit over-the-air broadcasters to achieve the same efficiencies from joint operations that the cable industry already enjoys -- efficiencies that will permit a larger percentage of the broadcaster's

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[12] In the TV Ownership Further Notice, the Commission confirmed that its "core concern with respect to diversity is news and public affairs programming especially with regard to local issues and events." TV Ownership Further Notice, 10 FCC Rcd. 3524, 3557 (¶ 72).

revenues to be used for the acquisition and development of the programming vital to the industry's long term health.

To illustrate these technological changes and the competitive threat faced by independent, over-the-air broadcasters from the vertically integrated cable industry, a review of Viacom's competitive position in the Boston television market is instructive. By way of background, following Viacom's relatively recent acquisition of Paramount, the combined entity controls 10 to 15 percent of the annual movie box office revenues plus several premium and basic cable networks including Showtime, The Movie Channel, MTV, Nickelodeon, the recently launched TV-Land, VH-1, half of Comedy Central, half of the USA Network, half of the Sci-Fi channel, and twelve television stations. The following tables (i) highlight the audience shares earned by Viacom's multiple channels in the Boston DMA, where cable penetration is slightly more than 77 percent and (ii) compare Viacom's results with those of the independent, over-the-air broadcasters assigned to the DMA.

VIACOM'S PRESENCE IN BOSTON

VIDEO PROGRAMMING OUTLET	S/O-S/O SHARE ALL TV HOUSEHOLDS
WSBK(TV)	4
Comedy Central	1
MTV	1
Nickelodeon	6
USA	2
Sci-Fi	-
VIACOM TOTAL	**14**

Source: Nielsen Media Research, DMA Total Activity Report, November 1996

VIACOM vs. LOCAL BROADCASTERS IN BOSTON

VIDEO PROGRAMMING OUTLET	S/O-S/O SHARE ALL TV HOUSEHOLDS
VIACOM (COMBINED)	14
WFXT (FOX)	7
WLVI-TV	4
WABU	1

Source: Nielsen Media Research, DMA Total Activity Report, November 1996

As illustrated in these tables, Viacom has six channels in almost 80 percent of the homes in Boston. These six channels account for 14 percent of the recorded viewing in the DMA, a result that dwarfs any of Boston's independent stations and even exceeds the results of the non-Viacom independent stations combined. Yet the Commission's duopoly rule precludes these independent stations from combining to create the same operating efficiencies Viacom already enjoys. Even more startling is the fact that Nickelodeon itself has a higher audience share than two of the UHF independent television stations, despite spotting these two stations access to over 20 percent of the market that does not subscribe to cable.

While the results highlighted above from Boston present startling information, they are far from unique. Vertically integrated cable companies enjoy similar advantages in markets across the country. Unless the Commission acts to give over-the-air broadcasters relief from the duopoly rule, the most popular programming will continue to migrate to the cable industry. This migration will disenfranchise the very people the Commission is most concerned with -- those individuals unable to pay for cable programming. To ensure the continued availability of the most popular programming on free, over-the-air television, Tribune urges the Commission to act now to permit over-the-air broadcasters to compete in today's mass media marketplace.

III. THE COMMISSION SHOULD PERMIT DUOPOLIES INVOLVING AT LEAST ONE UHF STATION

In response to questions raised in the TV Ownership Second Notice, Tribune, like many commentors, supports UHF-UHF and UHF-VHF combinations in the same market.[13] Tribune agrees

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[13] See Comments of National Association of Broadcasters at 10; Telemundo Group, Inc. at 2 (UHF/UHF and UHF/VHF combinations should be allowed); AK Media Group, Inc. at 10 (the Commission (continued...)

with the LSOC and other commentors who observed that UHF stations continue to experience significant competitive disadvantages compared to VHF stations. Comments of LSOC at 71-75.[14] Moreover, the potential loss of must-carry rights stemming from the cable industry's constitutional challenge in the Supreme Court makes the need for duopoly relief even more imperative. Without the ability to achieve operating efficiencies and invest the savings into popular programming, many over-the-air UHF broadcasters may simply be dropped from cable systems in favor of other basic cable networks.

Tribune also supports the creation of a new local ownership rule with a rebuttable presumption that the common ownership of two stations in different Designated Market Areas ("DMAs") is in the public interest. As the LSOC and others

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[13] (...continued)
should permit common ownership of two television stations in the same market where one or both of the stations are UHF); Paxson Communications Corporation at 12-13; SJL Communications, Inc. at 11; Sinclair Broadcasting Group, Inc. at 2; Max Media Properties LLC at 1; Waterman Broadcasting Corporation at 2; Association of Local Television Stations at 24-25; HSN, Inc. at 9-11; Pappas Stations Partnership at 6; Granite Broadcasting Corporation at 2-3; Diversified Communications at 9-10; Benedek Broadcasting Corporation at 6-7 (UHF-UHF combinations should be allowed); Blade Communications, Inc. at 19-22 (UHF-UHF combinations should be allowed).

[14] See Comments of: Telemundo Group, Inc. at 8 ("UHF stations are disadvantaged in the most fundamental way for television broadcasting - the ability to reach the public with a viewable signal of optimum quality"; "UHF stations typically generate less revenue than VHF stations because the reach and audience of UHF stations are smaller"); Malrite Communications Group, Inc. at 4-8; Granite Broadcasting Corporation at 4-6; Diversified Communications at 9; Blade Communications, Inc. at 19-22.

recognized, the DMA is the industry standard and is recognized as such. Comments of LSOC at 65-66.[15] Tribune submits that a rebuttable presumption based on the DMA is superior to the Commission's proposal that requires stations to be in separate DMAs with no Grade A overlap.

Although the Commission expressed the view that stations in different DMAs with overlapping Grade A contours might compete with each other, a station's DMA typically reflects the extent of its ability to sell its audience to advertisers.[16] For example, stations licensed to the Washington, D.C. DMA are not able to sell advertisers the audience they attract in those areas assigned to the Baltimore DMA, despite the fact that many of these stations are viewable over-the-air in the Baltimore DMA. Thus, barring substantial (i.e., in excess of 50 percent) Grade A

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[15] See Comments of: Paxson Communications Corporation at 7. See also, The Local Station Ownership Coalition at 70 (the Commission should have an exception for cases where there exists no Grade A overlap of stations in the same DMA); BET Holdings, Inc. at 5-6; Viacom, Inc. II at 5-7; National Association of Broadcasters at 2-4; Association of Local Television Stations at 20-22; HSN, Inc. at 6; Benedek Broadcasting Corporation at 2.

[16] As recognized by Albritton Communications Company:

> Although a television station may have viewers outside the DMA, it does not compete for those viewers since television advertising is sold on the basis of ratings measured only in the station's own DMA. . . . Advertisers seek and serve discrete markets -- markets defined by DMAs not predicted signal contours.

Reply Comments of Albritton Communications Company in response to Television Ownership Further Notice, MM Docket No. 91-221, filed July 10, 1995, at 3.

overlap -- an overlap that would almost certainly result in both stations being assigned to the same DMA, Tribune submits that two stations in different DMAs with overlapping Grade A contours do not compete, in any material way, with one another.[17]

Tribune also submits that duopoly rule relief is needed to correct what otherwise will be a colossal imbalance in the Commission's regulation of over-the-air broadcasters. For too long, the Commission has rejected any liberalization of the local duopoly rule while turning a blind eye toward television LMAs, which permitted participants to accomplish virtually the same results. The grandfathering provisions contained in the Telecommunications Act of 1996 (the "Act") mean, at the very minimum, that the Commission would have a considerable struggle undoing a significant number of the LMAs currently in force. Tribune accordingly urges the Commission to permit _de jure_ combinations in its rules, in light of the fact that the Act will almost certainly permit _de facto_ combinations to continue in the marketplace.[18]

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[17] The Commission should revisit its review of the territorial exclusivity rule, section 73.658(m), to reflect the market reality that a station's DMA, and the 35 mile radius, reflects is market area.

[18] Like the LSOC, Tribune also urges the Commission to recognize the public policy rationale articulated in the Act in support of LMAs -- that the benefits of combined operation are in the public interest -- and change its local television ownership rules to reflect this conclusion.

IV. PROPOSED ATTRIBUTION RULE CHANGES

Tribune formally joins the majority of commentors in the Attribution proceeding opposed to the Commission's so-called "equity and debt plus" proposal to limit the applicability of the single majority shareholder and nonvoting stock attribution exemptions for certain program suppliers and same-market broadcasters or media entities. Attribution FNPRM ¶¶ 8, 12-25.[19] As detailed more fully below, Tribune submits that there are several problems with this proposal.

First, although the proposal has been adopted in an effort by the Commission "to increase the precision" of its attribution rules, Attribution FNPRM ¶ 8, Tribune submits that there has been no demonstrated showing either in the record of this proceeding or in the Commission's recent cases suggesting that either the single majority shareholder or nonvoting shareholder exceptions need to be so limited. As Tribune demonstrated in its comments filed in response to the original Notice of Proposed Rule Making in this Attribution proceeding, the conditions and assumptions that supported the adoption of the

[19] See Comments of: Boston Ventures Management, Inc. at 4 (the "equity or debt plus" proposal should not be adopted); CBS Inc. at 4 ("For all the reasons that led the Commission to establish the single majority shareholder and nonvoting stock exemptions . . . it is unnecessary and inadvisable for the Commission to adopt the proposed 'equity or debt plus' rule"); Tele-Communications, Inc. at 2, 3 ("There is little or no record evidence of any need for making debt and nonvoting equity interests attributable."; implementation of the "equity and/or debt plus" rules will be difficult and costly); BET Holdings, Inc. at 2.

single majority shareholder rule have not changed, nor has experience demonstrated error in these assumptions.[20] The very same argument applies to the Commission's nonvoting stock exception.

Tribune submits that rather than modifying the single majority shareholder or nonvoting stock exemptions, the Commission should utilize its already existing policies and precedent to identify and redress situations in which a minority or nonvoting shareholder has control or exercises influence over a licensee that belies its minority or nonvoting interests. See KKR Associates, 2 FCC Rcd. 7104 (1987); National Broadcasting Company, Inc. (WKYC-TV), 6 FCC Rcd. 4882 (1991). In light of the lack of any finding by the Commission that either the single majority shareholder or nonvoting stock exemptions has resulted in even a single instance of unauthorized transfer of control or the exercise of undue influence over the affairs of a broadcast outlet, Tribune submits that the proposed "equity or debt plus" rule should not be adopted and cannot survive a review on appeal. See Cincinnati Bell Telephone Company v. Federal Communications Commission, 69 F.3d 752, 760 (6th Cir. 1995) (rejecting FCC's argument for deference to its common sense predictive judgment

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[20] Comments of Tribune Broadcasting, MM Docket Nos. 94-150, 92-51, 87-154, filed May 17, 1995, at 4-5.

when Commission failed to provide "anything resembling support" for its judgments).[21]

Second, as recognized by one commentor, one of the principal drawbacks of the "equity and debt plus" proposal is that it would "greatly restrict the flow of capital to broadcast entities, and have a substantial adverse effect on diversity, competition, and the conversion to DTV." Comments of Pappas Stations Partnership at ii.[22] In particular, Tribune submits that the primary victims of this extended attribution rule will be small broadcasters and minority entrepreneurs -- the entities that need capital the most, especially as broadcasters enter the transition to DTV.[23] In particular, and as demonstrated more fully in the Reply Comments submitted by Qwest Broadcasting L.L.C., the proposal would imperil a minority controlled company that operates successful television stations in Atlanta and New Orleans, respectively the tenth and forty-first largest markets in the country. See Reply Comments of Qwest Broadcasting L.L.C. Tribune submits that such a result is more than ample evidence that the "equity and debt plus" proposal is unnecessary and not in the public interest.

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[21] See Comments of Pappas Stations Partnership at 2; ABC, Inc. at 4-5.

[22] See Comments of Tele-Communications, Inc. at 2-3 (capital access is crucial as digital services are introduced and competitive pressures expand).

[23] See Comments of Fox Broadcasting Company at 2, 6; Comments of Tele-Communications, Inc. at 21; Comments of HSN, Inc. at 14.

Should the Commission nonetheless decide to adopt this proposal, Tribune submits that the definition of "program supplier" must be narrowly defined. Specifically, Tribune submits that the definition should exclude program syndicators (like King World or Tribune Entertainment) that typically sell programming in separate transactions to a variety of stations within and across individual markets. This distinction recognizes that program syndicators have neither the means nor the incentive to control individual stations.

The definition of program supplier should also be refined to apply only to those parties that actually exercise control over the operations of the supplier. This distinction recognizes that only the entity controlling the program supplier would have the ability to exercise whatever "undue influence" the Commission has determined may exist in certain relationships between certain program suppliers and licensees. While an actual control standard would be appropriate and acceptable to Tribune, for administrative convenience, Tribune also supports the application of the Commission's broadcast attribution rules to determine whether a party has an attributable interests in a program supplier. See Comments of CBS, Inc. at 7 n. 14 (supporting application of broadcast attribution rules to determine attributable interests in program suppliers).

Finally, Tribune supports the Commission's tentative conclusion to grandfather any interests made attributable by changes adopted to the attribution rules but to extinguish the grandfathered status when these holdings are subsequently sold. Attribution FNPRM ¶ 41. Tribune urges the Commission to extend this grandfathered treatment to any case referenced in footnote 30 of the Attribution FNPRM that was conditioned on the outcome of this proceeding but filed before December 15, 1994 -- the day the Commission adopted the NPRM in this proceeding.

In support of this proposal, Tribune submits that the same reasons the Commission has proposed to apply any new attribution rules to acquisitions completed after this same date, see Attribution FNPRM ¶ 42, presumably procedural fairness due to a lack of notice concerning the proposed changes, apply in these circumstances as well. Tribune submits that the Commission simply should not hold applicants to rule changes that were both proposed and adopted after the applicant filed for Commission consent to an underlying transaction. See Comments of ABC, Inc. at 10 ("Acquisitions made before the date when parities were put on notice that new attribution rules were contemplated should not be made attributable retroactively.") Accordingly, Tribune urges the Commission to grandfather any interests made attributable in cases conditioned on the outcome of this proceeding if the underlying application for Commission consent was filed before the NPRM was originally adopted in the proceeding.